

CHARLES H. MONTANGE  
ATTORNEY AT LAW  
426 NW 162ND STREET  
SEATTLE, WASHINGTON 98177  
  
(206) 546-1936  
FAX: (206) 546-3739

#E1-479  
R2

21 January 2004

Section of Environmental Analysis  
Att: Ms. Rini Ghosh  
Surface Transportation Board  
1925 K Street, NW  
Washington, D.C. 20423

Re: City of Venice -- Abandonment Exemption,  
AB 863X

Dear SEA:

This is in response to a letter dated January 16, 2004, addressed to Ms. Ghosh by Fritz Kahn, evidently on behalf of Terminal Railroad Association of St. Louis (TRRA). In his January 16 letter, Mr. Kahn asks that you "disregard" a letter provided by City of Venice dated January 13.

SEA served an environmental assessment (EA) for the above-referenced proceeding on January 2, 2004. The Board ordinarily provides a 15 day comment period on EA's. Such a period was provided in the Notice of Exemption for this proceeding, served December 29, 2003. This would lead to an expiration period for comments on January 20 (because January 17 -- 15 days from January 2 -- was a Saturday, and January 19 was a holiday). The EA itself provided for comments by January 16. Mr. Kahn for TRRA evidently mailed comments dated January 9, 2004. The comments purported to address a procedural deficiency in City of Venice's compliance with "environmental report" requirements, and also adduced other arguments, none of which involved any substantive environmental issues. City provided comments dated January 13, 2004 addressing the alleged procedural deficiency.

In his January 16 letter, Mr. Kahn contends that although replies to pleadings are generally permitted by STB rules (49 C.F.R. § 1104.13(a)), TRRA's "comments" were not a "pleading filed with the Board." Mr. Kahn then claims that the rules governing EA's only provide for "comments," and not for replies to comments, citing 49 C.F.R. § 1105.10(b).

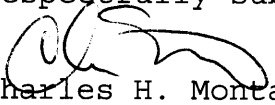
The purpose of the environmental rules is to ensure responsible discussion of environmental issues within the time frames specified by the STB. It is City's understanding that

SEA welcomes and considers comments, corrections, and contacts germane to that purpose, at least throughout the comment period. City provided its January 13 comments responding to Mr. Kahn's January 9 claim of deficiencies well within the time period for comment on the EA (which expired no earlier than January 16). Thus one need not decide whether "replies" to comments may be accepted,<sup>1</sup> because nothing in STB's rules bars an applicant for agency action from filing its own comments on the EA dealing with that action. City's January 13 letter must be considered on that basis, and as such the City's letter shows that Mr. Kahn's concerns have no merit. In any event, the information in the City's January 13 letter is self-evident from the record.

Furthermore, Mr. Kahn's letter of January 16 was apparently mailed, and thus itself presumably received by STB outside the comment period. Mr. Kahn himself therefore would presumably take the position that his own letter should be disregarded.

For these and other reasons, Mr. Kahn's request (if timely received) that you disregard City's "reply letter" has no basis. The relief Mr. Kahn seeks in his letter of January 16 accordingly should be rejected or ignored.

Respectfully submitted,

  
Charles H. Montange  
for City of Venice

cc. Fritz Kahn, Esq. (for TRRA)

---

<sup>1</sup> Candidly, City would think it absurd if they were not, so long as timely tendered.